

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

MOVIE GALLERY US, LLC,

Plaintiff,

vs.

**MARK W. GREENSHIELDS,
ASSOCIATED SOURCING, and
ASSOCIATED SOURCING HOLDINGS,
INC. d/b/a VIDEO LIBRARY**

Defendants.

CIVIL ACTION NO. 2:07CV1032-MHT

OPPOSITION TO MOTION FOR LEAVE TO FILE A RESPONSE

Plaintiff, Movie Gallery US, LLC (“Plaintiff” or “Movie Gallery”), through its undersigned counsel, hereby opposes Defendants’ “Motion for Leave to File a Response” (Pacer Doc. 48) (“Motion for Leave”) as follows:

1. The undersigned regrets that he has to file this Opposition. However, it is necessary for Movie Gallery to correct misstatements in Defendants’ Motion for Leave in order to preserve integrity before this Court. Further, Plaintiff opposes Defendants’ proposed deadline set forth in their Motion for Leave. Plaintiff does not oppose Defendants’ filing of a response to Plaintiff’s Motion for Leave. However, Plaintiff respectfully believes a phone conference, instead of a string of briefs, will resolve the matters currently before the Court in a more efficient manner.

2. In Paragraph 3 of their Motion for Leave, Defendants state “Before discussing the matter further with Defendants, Plaintiff filed a Motion to Continue on the morning of April 21, 2008.” This statement is wholly untrue. Philip Cutler telephoned the undersigned on the afternoon of April 18, 2008 to offer Defendants’ proposal regarding their opposition to Plaintiff’s

Motion to Continue. Later that evening, Phillip Cutler summarized the phone call in an email, which was sent to the undersigned at 6:44 PM, noting that the undersigned agreed to let Mr. Cutler know of Movie Gallery's decision on the matter promptly. (Attached hereto as Exhibit A.) In an email sent to counsel for Defendants at 2:39 PM on Saturday, April 19, 2008 in response to Mr. Cutler's previous email, the undersigned stated plainly "We will **not** agree to dismiss the state court action in exchange for an 'unopposed' Motion for Continuance." *See* Exhibit A (emphasis in original). Plaintiff's position could not have been clearer. After informing Defendants of Movie Gallery's position, Movie Gallery filed its Motion for Continuance as soon as possible in light of the fast-approaching deadlines. Thus, Defendants' aforementioned statement in their Motion for Leave simply is untrue, as Exhibit A demonstrates.

3. Defendants request a May 1, 2008 deadline for filing a response, which is ten days from the date they filed their Motion for Leave. Plaintiff opposes this proposed ten-day deadline for Defendants to explain their "serious concerns with the further delay of this matter." Importantly, as set forth in Plaintiff's Motion for Continuance, April 30, 2008 is the current deadline for Plaintiff to submit its expert report, and is one of the reasons (among many) Plaintiff seeks a continuance. Plaintiff's proposed deadline does not take the imminent expert report deadline into account. Further, although Defendants have chosen to oppose Plaintiff's Motion for Continuance, Defendants' counsel on the other hand expressly acknowledged the need to restructure the existing deadlines in this case. As set forth in Exhibit A, Philip Cutler explained "[a]lthough we did not discuss mentioning the need for Judge Thompson to set a comprehensive new schedule of pre-trial events, I think it would be good to do so. When Judge Thompson changed the original trial date he overlooked doing so." *See* Exhibit A. Obviously Defendants are concerned over the current deadlines, and a continuance of the trial date will benefit all

parties. Indeed, it appears as if the deadlines this Court set in Pacer Doc. 31, which were based on the re-setting of the trial date to July 7, 2008, were premised on discovery beginning immediately. However, as set forth in Plaintiff's Motion for Continuance, discovery was held in abeyance pending mediation, and the first depositions were not taken until April 1, 2008. Thus, it is a tall task for Plaintiff to make determinations relating to expert disclosure and submit a completed expert report before April 30, 2008, less than 30 days from the first depositions.

WHEREFORE, premises considered, Movie Gallery respectfully requests this Court to order a phone conference to resolve the instant matter in lieu of additional briefing. In the event this Court allows Defendants to file a response, Plaintiff respectfully request this Court to take into account the imminent deadlines approaching in setting a deadline for Defendants' response.

DATE: April 22, 2008

Respectfully submitted,

/s J. Ethan McDaniel
Jeffrey M. Grantham (GRA048)
M. Lee Huffaker (HUF011)
J. Ethan McDaniel (MCD065)
Attorneys for Plaintiff Movie Gallery

OF COUNSEL:

MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, AL 35203-2618
Telephone: 205.254.1000
Fax: 205.254.1999

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Charles Andrew Stewart, III
Quindal C. Evans
John Edward Goodman
Philip E. Cutler
Robert G. Nylander

/s J. Ethan McDaniel
OF COUNSEL

Exhibit A

Ethan McDaniel - Re: Motion for Continuance -- Movie Gallery Litigation

From: Ethan McDaniel
To: Phil Cutler
Date: 4/19/2008 2:39:47 PM
Subject: Re: Motion for Continuance -- Movie Gallery Litigation
CC: Charles A. Stewart; Jeff Grantham

Phil & Chuck:

We will **not** agree to dismiss the state court action in exchange for an "unopposed" Motion for Continuance.

Thanks,
Ethan

Ethan McDaniel
Maynard, Cooper and Gale, P.C.
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, Alabama 35203
Direct: 205.254.1197
Fax: 205.254.1999
emcdaniel@maynardcooper.com

>>> "Phil Cutler" <philcutler@cnhlaw.com> 4/18/2008 6:44:15 PM >>>
Ethan:

To confirm our phone conversation this afternoon.....we will not "join" in a motion for continuance, but you may represent to the Court in your motion that we will not oppose a continuance to the December 1 trial term **provided** Movie Gallery voluntarily dismisses (without prejudice) the recently-filed state court lawsuit against Jared Smith, Adam Plymale and Andy Kiel. In that connection, (1) Movie Gallery agrees to not refile the action until after the federal court litigation involving Mark Greenshields, Associated Sourcing and ASG Video is resolved and (2) we give you our assurance that, in the event the lawsuit is refiled those defendants will not make a claim for costs incurred in connection with the filing and dismissal of the original action. If this is acceptable, you can probably delete the current paragraph (#6) dealing with the state court case, or recite that it is being voluntarily dismissed. Obviously, the current draft of the motion (which assumes a joint motion) needs to be revised to reflect that it is filed by Movie Gallery only.

I understand that you need to consult with Jeff Grantham on this matter and you or he will let me know of that decision promptly. I expect to be in the office by 8:30a Pacific Time on Monday April 21 and to be around and available all day except for a 10a Pacific Time conference call (lasting 15-30 minutes) and a 12n Pacific Time conference call (lasting about an hour). At this point my calendar for Tuesday April 22 is clear. Best to call on our main number (206-340-4600) so our receptionist can page me or patch through to my cell phone if I'm not readily available.

Regards,

Phil

PS -- Although we did not discuss mentioning the need for Judge Thompson to set a comprehensive new schedule of pre-trial events, I think it would be good to do so. When Judge Thompson changed the original trial date he overlooked doing so.

<mailto:PhilCutler@cnhlaw.com>
www.cnhlaw.com